

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| IN RE: | § | |
| | § | |
| BROUGHER, INC., | § | Case No. 16-35575 |
| | § | |
| DEBTOR | § | Chapter 11 |
| | § | |
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| | § | |
| JOHN BAUMGARTNER, TRUSTEE OF | § | |
| THE BROUGHER LITIGATION | § | |
| TRUST, | § | |
| | § | Adversary Proceeding |
| PLAINTIFF, | § | |
| | § | No. 18-03056 |
| vs. | § | |
| | § | |
| A. FINKL & SONS CO., | § | |
| | § | |
| DEFENDANT. | § | |

SETTLEMENT AGREEMENT

On November 2, 2016 (“Petition Date”), Debtor Brougher, Inc. filed a petition for relief under chapter 11 of title 11, United States Code (“Bankruptcy Code”), in the United States Bankruptcy Court for Southern District of Texas, Houston Division (“Bankruptcy Court”).

WHEREAS, on July 28, 2017, this Court entered an Order Confirming Debtor’s Third Amended Combined Disclosure Statement and Plan of Liquidation (“Plan”) (Doc. No. 142). This Order confirmed the terms of Article 8 of the Plan, which created the Brougher Litigation Trust and provided for title to the Debtor’s assets to vest in the Litigation Trust (Doc. No. 142-1, p. 27). The Order also confirmed that John Baumgartner would serve as the Trustee of the Brougher Litigation Trust pursuant to the terms and conditions of the Plan, the Order, and the Trust Agreement. Finally, the Order confirmed that pursuant to the Plan, the Brougher Litigation Trust

was assigned certain defined Causes of Action including all chapter 5 causes of actions (Doc. No. 142, p. 3).

WHEREAS, the Trustee has identified three transfers for \$270,516.00 that the Debtor made to A. Finkl & Sons Co. that it has investigated as a potential preference and/or fraudulent transfer;

WHEREAS, A. Finkl & Sons Co. asserts that it received the transfers, but that the transfers do not qualify as preferences and/or fraudulent transfers under applicable bankruptcy and non-bankruptcy law;

WHEREAS, the Parties wish to resolve all of the issues described above, as provided below:

The Parties hereby agree to the following:

- A. A. Finkl & Sons Co. shall pay \$30,000.00 to the Brougher Litigation Trust in full satisfaction of any claims and/or causes of action that the Brougher Litigation Trust asserted or that it or the Debtor could have asserted against A. Finkl & Sons Co. The settlement payment shall be made within ten (10) business days after Court approval of this agreement.
- B. Any claims and/or causes of action the Debtor or the Brougher Litigation Trust owns, or may own, against A. Finkl & Sons Co., are hereafter released and forever barred.
- C. A. Finkl & Sons Co. shall retain any and all claim(s), interest(s), and/or right(s) it has as a pre-petition creditor of the Debtor and/or beneficiary of the Brougher Litigation Trust, specifically including but not limited to an allowed claim for \$30,000.00 pursuant to 11 U.S.C. § 502(h) for the above referenced settlement payment.

D. The Brougher Litigation Trust shall dismiss this adversary proceeding with prejudice within ten (10) days after receipt of the payment in paragraph A.

THE FOREGOING SETTLEMENT IS AGREED TO BY:

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AS TRUSTEE OF THE BROUGHER LITIGATION TRUST

And

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